



**U.S. Department of Justice**

Office of Legal Counsel

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*Washington, D.C. 20530*

February 5, 2008

Steven Aftergood  
Federation of American Scientists  
1725 DeSales Street, N.W.  
6th Floor  
Washington, DC 20036

Dear Mr. Aftergood:

This is in response to your Freedom of Information Act ("FOIA") request dated December 18, 2007. We have searched the files of the Office of Legal Counsel and have found one document that is responsive to your request. We are withholding the document in full because it is classified and thus exempt under Exemption 1 of the FOIA, 5 U.S.C. § 552(b)(1), and because it contains information of the type described in Section 6 of the National Security Act of 1959, Pub. L. No. 86-36, § 6, 73 Stat. 63, 64, codified at 50 U.S.C. § 402 note, and in Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 403-1(i)(1), and is thus exempt under Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3). In addition, the document is subject to the deliberative process and attorney-client privileges and thus is also withheld under Exemption 5, 5 U.S.C. § 552(b)(5).

If you are not satisfied with my action on this request, you may appeal by writing to the Director, Office of Information and Privacy, United States Department of Justice, Washington, D.C. 20530, within 60 days from the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink that reads "Paul P. Colborn".

Paul P. Colborn  
Special Counsel

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\*Steven Weinberg  
\*Torsten N. Wiesel  
Herbert F. York

\* Nobel Laureate

# F.A.S.

## FEDERATION OF AMERICAN SCIENTISTS

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March 11, 2008  
(202)454-4691  
saftergood@fas.org

Elizabeth Farris  
Office of Legal Counsel  
Room 5515, 950 Pennsylvania Avenue, NW  
Department of Justice  
Washington, DC 20530-0001  
By fax: 202-514-0563

Dear Ms. Farris:

This is a request under the Freedom of Information Act.

We request a copy of an Office of Legal Counsel opinion from the George W. Bush Administration pertaining in part to the efficacy of executive orders.

In particular, Senator Sheldon Whitehouse stated on the Senate floor on December 7 that he had examined an OLC opinion which included, according to his notes, the following statement or something resembling it:

“An Executive order cannot limit a President. There is no constitutional requirement for a President to issue a new Executive order whenever he wishes to depart from the terms of a previous Executive order. Rather than violate an Executive order, the President has instead modified or waived it.”

We request a copy of the OLC opinion referenced by Sen. Whitehouse.

\* \* \*

We further request a fee waiver, on grounds that the subject matter is one of public interest. But if fee waiver is denied, I hereby agree to pay assessable fees up to \$50.

Thank you for your assistance.

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*Ex officio: Carl Kaysen, Robert M. Solow*

Yours sincerely,

Steven Aftergood  
Senior Research Analyst  
Federation of American Scientists  
1725 DeSales Street NW, 6<sup>th</sup> floor  
Washington, DC 20036

Voice: (202)454-4691

Email: [saftergood@fas.org](mailto:saftergood@fas.org)

P.S. For your reference, Senator Whitehouse's December 7 remarks can be found here:

<http://whitehouse.senate.gov/record.cfm?id=288537&>